

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT
PROGRAM DESCRIPTION
FOR
LOCALITY COMPLIANCE WITH REVISED REGULATIONS

*Local Government Compliance with Changes to 9 VAC 10-20-10 et seq.
Chesapeake Bay Preservation Area Designation and Management
Regulations.*

DECEMBER 2001

Requirement and program: On December 10, 2001 the Chesapeake Bay Local Assistance Board adopted changes to 9 VAC 10-20-10 et seq. Local governments in Tidewater Virginia must now review and amend their local Chesapeake Bay regulation programs to assure compliance with the revised Regulations. Appropriate changes must be made to local programs within one year from the effective date of the Regulations (approximately in March 2003). Once a locality adopts these amendments, the modified program must be submitted to the Chesapeake Bay Local Assistance Board for a consistency review (9VAC 10-20-231).

To assist local governments in this process, the Chesapeake Bay Local Assistance Department (CBLAD) will create guidance documents or revise the Local Assistance Manual on certain topics, including revisions to the “model ordinance” and will provide technical assistance directly to affected units of government. Localities are encouraged to contact their assigned liaison for any special assistance needs.

Categories of Changes: CBLAD has categorized each of the changes to the Regulations into one of the following categories:

- Items which are to be immediately implemented;
- Items that must be addressed through appropriate ordinance revisions within the one year period;
- Items that may be included as a local option; and
- Items that currently do not require a change to local programs but which will require future action.

Each of these categories is described below. A listing of the sections of the Regulations that have been amended and their relationship to the above categories is provided in the accompanying table.

Items that require immediate implementation: A primary objective of the changes to the Regulations was to clarify the protection and maintenance of the Resource Protection Area (RPA) 100-foot buffer. Language that had existed, and which had previously caused confusion, has been removed. It is the position of the Board and the Department that, pursuant to the Dillon Rule application of law in the Commonwealth, there is no longer any authority for any equivalency provision in local ordinances or codes. Therefore, all local governments are expected to comply with the requirements for the establishment and protection of the 100-foot RPA buffer immediately upon the effective date of the revised Regulations.

Items that require review/modification within one year: These items must be reviewed by the localities to see if any modification needs to be made to the local program to maintain consistency between the local program and the Regulations. Resulting local program modifications must be made within one year of the effective date of the Regulations. Modifications pertaining to the Phase III component of the Regulations will not need to be addressed until after Phase III guidance is provided by the Board. These items include:

- There are several definitions that must be changed in the local ordinance (see the attached table for a list of these definitions);
- Perennial flow basis for determining the RPA buffer associated with water bodies, including rivers and streams;
- RPA buffer preservation and protection;
- Site specific RPA delineation requirement;
- Stormwater Management performance criteria;
- Agriculture performance criteria and with aspects of agriculture management plans, standards, references, and enforcement;
- Clarifications regarding non-conforming structures and lots and exemptions; and
- Exception review and approval process.

Item that are permissive and may be included in local programs as a local option: These items may be enacted by local governments but they are not required.

- Septic system inspections and alternatives;
- Some components of the stormwater performance criteria;
- Local program practices in Intensely Developed Areas (IDAs) where appropriate;
- Accommodation of regional BMPs in the RPA;
- Some components of the Agricultural management plans;
- The additional grandfather period, from October 1989 to the effective date of the current changes; and,
- Civil penalties.

Changes to the Regulations that do not require local action at this time: There are items that should be addressed by a locality concurrent with the required update; however, they do not need to be addressed until the Department provides further guidance regarding them. These items include those that will be necessary for Phase III consistency and to accommodate changes pertaining to comprehensive plans. Also, it may be necessary to make changes for consistency between the local program documents and the wording of the Regulations – this will be dependent upon the structure of the local program. If not accommodated sooner, it is anticipated that the guidance issued by the Board for the Compliance Review Report (CRR), required pursuant to 9 VAC 10-20-250.1.b., will have as a part of the initial CRR, an assessment of consistency between all of the sections of the Regulations that were modified and the local program regulations.

Local Government Actions: CBLAD will provide timely guidance to assist with the local program review and modification process. Local governments are encouraged to contact their CBLAD liaison to determine locality-specific technical assistance needs, issues for which guidance is desired, and a schedule of local activities.

Local governments, subject to the Chesapeake Bay Preservation Act, are expected to take local corrective action, if necessary, to comply with provisions of 9 VAC 10-20-130 and 9 VAC 10-20-150 as they pertain to identification and protection of the RPA buffer. They are also expected to identify their needs and take appropriate actions so that the local program is duly modified prior to one year from the effective date of the revised Regulations.

Any local government may proceed in an expeditious manner, make changes to its local program, and submit those changes for compliance review prior to the end of the one year period.

Attachment (Table)

| Compliance Scheduling for changes that were made to the Regulations (12-17-01) | | | | | | | |
|---|--------------------------|----------------------|--------------------------------------|-----------------|--------------------------|--------------------------------------|--|
| | <i>Section Reference</i> | <i>General Topic</i> | <i>Specific Item(s)</i> | <i>Category</i> | | | |
| | | | | Local Option | Required within one year | No changes are required at this time | |
| 1 | 10-20-30 | Purpose | Word change “protect” to “ensure” | | | X | |
| 2 | 10-20-40 | Definitions | Various re code reference changes | | | X | |
| 3 | 10-20-40 | Definitions | Highly erodible soils | | X | | |
| 4 | 10-20-40 | Definitions | Highly permeable soils | | X | | |
| 5 | 10-20-40 | Definitions | Resource Protection Area | | X | | |
| 6 | 10-20-40 | Definitions | Shoreline | | X | | |
| 7 | 10-20-40 | Definitions | Silviculture | | X | | |
| 8 | 10-20-40 | Definitions | Tributary Streams | | X | | |
| 9 | 10-20-40 | Definitions | Tidal wetlands | | X | | |
| 6 | 10-20-60 | Elements | Housekeeping | | | X | |
| 7 | 10-20-80.A | RPA | Description | | X | | |
| 8 | 10-20-80.B.2 | RPA Feature | Re perennial flow | | X | | |
| 9 | 10-20-80.B.4 | RPA Feature | Other lands, wording | | | X | |
| 10 | 10-20-80.B.5 | RPA Buffer | Buffer description | | X | | |
| 11 | 10-20-80.C | RPA Buffer | Change “reduction” to “modification” | | X | | |
| 12 | 10-20-80.D | RPA | Perennial flow | | X | | |
| 13 | 10-20-90 | RMA | Designation Policy - Various | | | X | |
| 14 | 10-20-100 A&B | IDA | Description, criteria | X | | | |
| 15 | 10-20-105 | CBPAs | Site specific refinement required | | X | | |
| 16 | 10-20-110 A,B,C | Part IV Purpose | Clarification in Purpose statement | | | X | |
| 17 | 10-20-110.D | Part IV Purpose | Bay Act into plans and codes | | | X | |
| 18 | 10-20-120 | Perf. Standards | General | | | X | |
| 19 | 10-20-120.1-6 | Perf. Standards | Wording changes | | | X | |
| 20 | 10-20-120.7 | On-site STS | Inspections & Alternatives | X | | | |
| 21 | 10-20-120.8 | SWM | Various items | X | X | X | |
| 22 | 10-20-120.9 | Agriculture | Various items | | | X | |

Legend:

Local Option - - Permissive to the local government

Required - - - - Local gvt to review and take corrective actions within 12 months of effective date of the Regulations

No change - - - - No change appears necessary to the local program codes, regulations, or documentation

| | <i>Section Reference</i> | <i>General Topic</i> | <i>Specific Item(s)</i> | <i>Category</i> | | | |
|----|--------------------------|----------------------|---------------------------------------|-----------------|--------------------------|--------------------------------------|--|
| | | | | Local Option | Required within one year | No changes are required at this time | |
| 23 | 10-20-120.10 | Silviculture | Various items | | X | | |
| 24 | 10-20-130.1.a | RPA Uses | Local authority | X | | X | |
| 25 | 10-20-130.1.c | RPA Uses | Redevelopment = no increase in IC | | X | | |
| 26 | 10-20-130.1.e | RPA Uses | Regional BMPs in the RPA | X | | | |
| 27 | 10-20-130.2 | RPA Uses | Exemptions, wording changes | | | X | |
| 28 | 10-20-130.3.a | RPA Buffer | Description and equivalency | | X | | |
| 29 | 10-20-130.3.b | RPA Buffer | Reestablishment on Ag & Forest lands | | X | | |
| 30 | 10-20-130.4.a | RPA Buffer | Wording re “encroachments” & admin | | X | | |
| 31 | 10-20-130.4.b | RPA Buffer | Additional grandfather period | X | | | |
| 32 | 10-20-130.5.a | RPA Buffer | Modifications to: | | | X | |
| 33 | 10-20-130.5.a 3 | RPA Buffer | Maintenance | | X | | |
| 34 | 10-20-130.5.b 1-5 | Ag | Mgmt plan rqmnts & enforcement | X | X | X | |
| 35 | 10-20-130.6 | WQIA | Removal of “90 days” | | | X | |
| 36 | 10-20-130.7 | IDA Buffer | Clarifies reestablishment is optional | | | X | |
| 37 | 10-20-150 A & B | Noncon & Exm | Clarification of language & additions | | X | X | |
| 38 | 10-20-150.C | Exceptions | Revised requirements | | X | | |
| 39 | 10-20-170 | Comp Plan | General | | | X | |
| 40 | 10-20-171 | Comp Plan | Various | | | X | |
| 41 | 10-20-181 | LDRs | Purpose – revised to land dev. regs. | | | X | |
| 42 | 10-20-191 | LDRs | Local regulation requirements | | Partial | Phase III | |
| 43 | 10-20-211-231 | PART VII | Revised & new, program review | | | X | |
| 44 | 10-20-231.4 | Mgmt Program | Inclusion of civil penalty provisions | X | | | |
| 45 | 10-20-250.1. | Program Rvw | Annual implementation report | | | X | |
| 46 | 10-20-260 | Legal procedure | General changes | | | X | |
| | | | | | | | |

Legend:

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